

Hospital Linen Service Facility and Laundry and Dry Cleaning International Union, Local 141, AFL-CIO. Cases 6-CA-26123 and 6-CA-26152

April 10, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

This case presents two issues.¹ (1) Did the judge correctly find that the Respondent violated Section 8(a)(1) of the National Labor Relations Act by threatening a union steward with discharge if she did not provide a written account of an employee's conduct witnessed while performing steward duties? (2) Did the judge correctly find that the Respondent did not violate Section 8(a)(1) of the Act by warning a union steward against unauthorized postings on a union bulletin board and by refusing the Union's request to post an unfair labor practice charge on the bulletin board?

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order as modified.³

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Hospital Linen Service Facility, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall take the actions set forth in the Order as modified.

1. Delete paragraph 2(a) and reletter the subsequent paragraphs.
2. Substitute the attached notice for that of the administrative law judge.

¹ On December 28, 1994, Administrative Law Judge Marion C. Ladwig issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed cross-exceptions and a supporting brief, and both parties filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² In adopting the judge's finding that the Respondent did not violate Sec. 8(a)(1) by warning Union Steward Noreen Stapinsky for posting the unfair labor practice charge in Case 6-CA-26123 on the union bulletin board without the Respondent's permission, we find it unnecessary to rely on his finding that this charge contained "untrue, controversial allegations."

³ Absent evidence that any reference to the unlawful threat of discharge to Union Steward Noreen Stapinsky exists in the Respondent's files, we shall delete, as unnecessary, the judge's recommended Order provision requiring the Respondent to remove such reference from its files.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten to discharge any union steward for failing to provide us a written account of an employee's conduct witnessed while performing steward duties.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

HOSPITAL LINEN SERVICE FACILITY

Robin F. Wiegand, Esq., for the General Counsel.
Richard V. Sica, Esq., of Pittsburgh, Pennsylvania, for the Respondent.
Stephen H. Jordan, Esq., of Pittsburgh, Pennsylvania, for the Union.

DECISION

STATEMENT OF THE CASE

MARION C. LADWIG, Administrative Law Judge. These cases were tried in Pittsburgh, Pennsylvania, on November 2, 1994.¹ The charge in Case 6-CA-26123 was filed on January 25 and in Case 6-CA-26152 on February 7 (amended June 16). The consolidated complaint was issued June 16.

On January 15, Weekend Shop Steward Noreen Stapinsky, a member of the Union's grievance committee, represented employee Raymond Williams in a 3:15 p.m. disciplinary meeting in which General Manager Edward Nazareth discharged Williams for smoking in the restroom. Later at quitting time, Nazareth threatened to discharge Stapinsky if she failed to provide him a written account of Williams' conduct that she witnessed that afternoon.

On February 2, after Stapinsky had taped an National Labor Relations Board (NLRB) charge on the outside of the locked glass on the union bulletin board, Nazareth warned her that anybody putting anything on the board without permission could be disciplined. About 2 weeks later, Nazareth refused the Union's request to post another charge.

The primary issues are whether the Company, the Respondent (a) unlawfully threatened to discharge the union steward and (b) unlawfully warned the union steward about posting material without permission and refused the Union's request to post a charge against the Company, violating Section 8(a)(1) of the National Labor Relations Act.

¹ All dates are in 1994.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the Company and the Union, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company, a corporation, annually performs services valued over \$50,000 at its facility in Pittsburgh, Pennsylvania, for hospitals that are health care institutions within the meaning of Section 2(14) of the Act and that annually derive gross revenue in excess of \$250,000. The Company admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Threat to Discharge Union Steward

1. Discharged employee's conduct

Noreen Stapinsky, a member of the grievance committee, is the weekend shop steward (Tr. 26).

About 12:30 p.m. on Saturday, January 15, General Manager Nazareth instructed Stapinsky, as the union steward on duty, to remain upstairs in the training room for a disciplinary meeting. In the meeting, Nazareth informed employee Raymond Williams that Nazareth had caught him smoking in the men's restroom and that Nazareth would give a decision on discipline later that day. (Tr. 27-28.)

About 3:15 p.m., again in Stapinsky's presence in the meeting room as the steward, Nazareth handed Williams an envelope and informed him that it contained his discharge letter. As Nazareth was reading a copy of the letter to him, Williams tore up the unopened envelope and threw it at Nazareth's face. Williams asked, "Why did you wait until 3:30 to fire me, why couldn't you do it at 12:30?" Nazareth answered, "I can do whatever I like, I'm the boss." (Tr. 28-30, 55-56, 85-86.)

They left the meeting and went through the lounge into the hallway. As Nazareth was going into his office and Stapinsky was "starting to head downstairs to the production floor," Williams began cursing and threatening Nazareth with bodily harm. (Tr. 30-31, 41, 56-58, 86-87.) Supervisor Amvel McIver, who also had attended the discharge meeting, advised Williams to leave before he got in trouble and escorted him outside the building (Tr. 87-88). After working until 3:30 p.m., Stapinsky met Williams in the parking lot and advised him about filing a grievance (Tr. 32-33).

2. Threat to discharge steward

It is undisputed, as Stapinsky credibly testified, that before she left the hallway to go downstairs, Nazareth told her: "You heard what he said, I want a written statement from you. If you don't provide me with this statement you will be in a sling." On cross-examination, Stapinsky answered, "It was . . . when I was on my way down to the production floor," to the company counsel's question about whether Nazareth had "asked [her] for [a statement] involving what had transpired at the [discharge] meeting." (Tr. 31, 41-42, 51.)

About 3:30 that afternoon, January 15, as Stapinsky was leaving work, Nazareth told her, "You have until Wednesday to provide me with that statement. If you don't provide me with that statement at that time, *you will no longer work here* [emphasis added]" (Tr. 32).

At the 9:30 a.m. break on Wednesday, January 19, Nazareth asked Stapinsky if she brought the statement. She said she did, but "I'm not sure if I'm going to give it to [you]." Later that morning on the production floor, with Supervisor Mabel Liggins present, Nazareth again asked Stapinsky if she had the statement. She told him she did, but the Union was not too happy about her having to give him a statement on this. Liggins asked Nazareth what was he going to do if the Union kicked Stapinsky out, make her a supervisor? He evaded the question. Stapinsky then gave Nazareth her statement, which related that at 12:30 p.m. on January 15 she was called to the office as the union representative and which related what happened in the 12:30 and 3:15 p.m. meetings and after the termination, when Williams "started to swear and threaten Mr. Nazereth" (misspelling his name). (Tr. 33-36; G.C. Exh. 3.)

About 2 p.m. Nazareth went to Stapinsky's work station and "yelled at [her] for spelling his name wrong" (Tr. 32-33).

3. Contentions and concluding findings

The General Counsel contends (Tr. 7) that the Company's requiring the steward to provide it with the written account of the events surrounding Williams' termination "put the steward in a sharp conflict of interest, pitting her interest [of] representing employees in the bargaining unit to her fullest extent versus trying to satisfy the [Company's] desires and being threatened with discharge."

The Company contends in its brief (at 9-10) that Williams was fired only for smoking on company premises, not for verbally assaulting and threatening Nazareth. Although Stapinsky was present in the hallway as well as in the discharge meeting only because she was the steward representing Williams (a protected concerted activity), the Company argues (at 10-12) that "Williams was already terminated and Stapinsky was not acting as a union representative at the time of the verbal assault." It argues that therefore she "was not engaged in a protected union activity at the time she heard the threats." To the contrary, Williams' conduct in the hallway closely related to Williams' response in the discharge meeting, both in time (immediately afterward the meeting) and in subject matter (responding to what he evidently considered an unjust discharge).

The Company contends in its brief (at 12-13) that its "demand that Stapinsky document her observation of Williams' outburst" after the discharge was not "for the purpose of vindicating a disciplinary action [for smoking] or discovering a union's arbitration position." Relying on Nazareth's claim at the trial (Tr. 58), the Company contends (at 12-13) that "Nazareth wanted the written statement from Stapinsky because he wanted documentation of the threat in the event Williams attacked him in the future."

I find this professed purpose of the written statement to be an afterthought.

Williams had engaged in misconduct both during the 3:15 p.m. discharge meeting (in Nazareth's words, Tr. 56, "he just tore up the envelope . . . and threw it at me") and later

in the hallway. Any grievance and arbitration challenging the justness of the discharge could be expected to involve a request for reinstatement. I find that a purpose for Nazareth's coercing Steward Stapinsky (with the threat of discharge) to provide him the written statement was to supplement the testimony that Nazareth and Supervisor McIver could give in opposing reinstatement if the Union took a grievance by Williams to arbitration.

Contrary to Nazareth's claim (Tr. 58) that he asked both Stapinsky and Supervisor McIver to give him written statements of what they had seen and heard that "had transpired out in the hallway," they both understood that Nazareth was referring to what happened in the discharge meeting as well as out in the hallway. Stapinsky's written statement (G.C. Exh. 3) includes what happened at the 3:15 p.m. meeting and later in the hallway. McIver's written statement (G.C. Exh. 4) relates in detail what happened in the discharge meeting and in the hallway. McIver admitted that Nazareth asked him to write "everything that I had witnessed and heard that took place in the meeting and in the hallway" (Tr. 88-89).

I discredit Nazareth's claim (Tr. 58-59) that he specifically limited his requests, asking Stapinsky and McIver only "to give me written statements of what they had seen and heard that *had transpired out in the hallway* [emphasis added]." I also discredit his claim (Tr. 58), "That is not my recollection that I had threatened [Stapinsky] at any time that she would be discharged."

Having found that Stapinsky was serving as a steward in representing Williams both in the discharge meeting and afterward in the hallway, engaging in protected concerted activity, I agree with the General Counsel that the Company unlawfully coerced Stapinsky by demanding that she provide him a written statement of the incident under threat of discharge. I find that by doing so, the Company was infringing on protected concerted activity by putting the steward, a representative of the Union, in a sharp conflict of interest by pitting her interest in representing this bargaining unit employee to the fullest extent, against her interest in protecting her own job by complying with the Company's demand.

I therefore find that on January 15, 1994, the Company, as alleged in the complaint, threatened a steward, a union representative, with discharge if the steward failed to provide it a written account of an employee's conduct witnessed while performing steward duties, violating Section 8(a)(1) of the Act.

B. Use of Union Bulletin Board

The complaint alleges, as further 8(a)(1) violations, that the Company unlawfully threatened a steward with disciplinary action for attempting to post union-related materials without prior authorization and later refused a union request for permission to post an unfair labor practice charge.

The current collective-bargaining agreement (G.C. Exh. 2, p. 21) provides in article 8, "Union Activities," section 7, "Union Bulletin Board," as follows:

The Employer will provide the Union with a bulletin board for the use by the Union in *announcing meetings or other routine or non-controversial matters*. The union bulletin board will be *glass-covered with a lock*. All notices posted on the union bulletin board shall be signed by a union official as evidence that its posting

has been authorized by the Union. The *bulletin board key shall be available upon request at the Personnel Office*. [Emphasis added.]

Although prior company approval is not specifically required in this provision in the contract, it is undisputed, as Union Steward Clariece Branch admitted (Tr. 13), that the practice in getting something posted has been for the union steward to take the material to the office and give it to a secretary, who "would let Mr. Nazareth see it and post it on the bulletin board. . . . that's the way it was always done before."

Similarly, General Manager Nazareth credibly testified (Tr. 63):

Q. Is there a procedure for the Union to follow if they wish to post information on their bulletin board?

A. The procedure that a Union follows is . . . whatever needs to be posted they bring it into the office and make us aware of what needs to be posted, then we date stamp it and if it's okay, then we post it on the bulletin board.

In the past, the Union has received company approval to post such material as notices of union meetings or election of stewards and applications for union-sponsored credit cards (Tr. 12, 37).

On Sunday, January 30, Weekend Shop Steward Noreen Stapinsky failed to follow this procedure. She taped on the outside of the locked bulletin board glass a copy of the charge in Case 6-CA-26123, filed January 25. It alleged the unlawful threat to discharge Stapinsky "if she fails to provide written evidence to the Employer, requested for purposes of *establishing and justifying discipline* [emphasis added]" of Raymond Williams.

Nazareth required Stapinsky to remove the charge and in a meeting on February 2, told her that all material to be posted "had to go through him," or "You could be disciplined." She asked, "You mean I could be fired?" and he answered, "No, that you could be disciplined. Anybody that put anything on the board without permission could be disciplined."

In mid-February Nazareth refused the Union's request for permission to post its charge in Case 6-CA-26152, filed February 7. It alleged threats to discipline stewards "if they attempt to post union-related materials on the union bulletin board . . . without permission of the Employer" and that "There has *never been a requirement of employer approval* [emphasis added] for posting of union-related materials."

I agree with the Company that both of the charges contained untrue, controversial allegations. The January 25 charge incorrectly alleged that the purpose of Stapinsky's required written statement was "establishing and justifying discipline" of Williams (whereas the statement would concern only his reinstatement if the justness of his discharge went to arbitration). The February 7 charge incorrectly alleged that there has "never been a requirement of employer approval" for the posting of material on the union bulletin (whereas both the Company and the Union agreed that there was such a practice, although not a specific contractual requirement).

I find that the Company was justified in issuing the warning that anybody that put material on the union bulletin board without permission could be disciplined (particularly

after Stapinsky had taped the charge on the outside of the locked bulletin board glass).

I also find that the Company was justified in refusing the Union's request for permission to post its February 7 charge, as a contractual controversial matter, because it incorrectly alleged that there had "never been a requirement of employer approval" for posting union material on the bulletin board.

I therefore find that these 8(a)(1) allegations must be dismissed.

CONCLUSIONS OF LAW

1. By threatened a union steward with discharge if the steward failed to provide it a written account of an employee's conduct witnessed while performing steward duties, the Company has engaged in an unfair labor practice affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. The Company, acting in accordance with the established practice under a contractual bulletin board provision, did not violate the Act by warning a union steward that anybody putting material on the union bulletin board without permission could be disciplined and by refusing under the contractual provision to grant the Union's request for permission to post an NLRB charge against the Company, containing a clearly incorrect, controversial allegation.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

¹⁸If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, Hospital Linen Service Facility, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening to discharge any union steward for failing to provide it a written account of an employee's conduct witnessed while performing steward duties.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remove from its files any reference to the unlawful threat to discharge Weekend Shop Steward Noreen Stapinsky and notify her in writing that this has been done and that discharge threat will not be used against her in any way.

(b) Post at its facility in Pittsburgh, Pennsylvania copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

³If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."